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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 ANGELINA GALVAN, ) No. CV 09-07876-VBK  
12 )  
13 Plaintiff, ) MEMORANDUM OPINION  
14 ) AND ORDER  
15 v. )  
16 ) (Social Security Case)  
17 MICHAEL J. ASTRUE, )  
18 Commissioner of Social )  
19 Security, )  
20 )  
21 Defendant. )  
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18 This matter is before the Court for review of the decision by the  
19 Commissioner of Social Security denying Plaintiff's application for  
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have  
21 consented that the case may be handled by the Magistrate Judge. The  
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to  
23 enter judgment upon the pleadings and transcript of the Administrative  
24 Record ("AR") before the Commissioner. The parties have filed the  
25 Joint Stipulation ("JS"), and the Commissioner has filed the certified  
26 AR.

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") improperly

1 failed to give clear and convincing reasons for discrediting  
2 Plaintiff's testimony regarding the severity of her  
3 symptoms;

4 2. Whether the ALJ ignored medical evidence of Plaintiff's  
5 meralgia paresthetica; and

6 3. Whether the ALJ improperly gave insufficient weight to  
7 undisputed evidence regarding Plaintiff's obesity and its  
8 effect on Plaintiff's ability to work.

9 (JS 6, 11, 14.)

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11 This Memorandum Opinion will constitute the Court's findings of  
12 fact and conclusions of law. After reviewing the matter, the Court  
13 concludes that for the reasons set forth, the decision of the  
14 Commissioner must be reversed.

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16 I

17 **THE ALJ FAILED TO GIVE CLEAR AND CONVINCING REASONS**  
18 **TO DISCREDIT PLAINTIFF'S SYMPTOM TESTIMONY**

19 As set forth in the "Joint Background Statement" (JS at 2-5),  
20 there is substantial evidence in the record pertaining to Plaintiff's  
21 subjective pain, as reflected in her testimony at the hearing before  
22 the ALJ (AR 20-39); complaints she made about her pain to various  
23 treating physicians over substantial spans of time; and various  
24 medications which she takes, some of which are for pain. If any or  
25 all of Plaintiff's pain symptomology were accepted by the ALJ, it  
26 would likely affect, whether substantially or otherwise, the  
27 assessment of Plaintiff's Residual Functional Capacity "(RFC)".  
28 Nevertheless, in an exceedingly short decision, the ALJ rejected

1 Plaintiff's testimony as to her pain symptoms, simply repeating the  
2 rubric that "[Plaintiff's] statements concerning the intensity,  
3 persistence and limiting effects of these symptoms are not entirely  
4 credible." (AR 18.) There is nothing else in the decision which,  
5 inferentially or directly, can be considered an evaluation of the  
6 evidence in the record as it pertains to the credibility assessment.

7 The law concerning subjective pain testimony is clear and well-  
8 established, and need not be discussed extensively here. An ALJ may  
9 reject subjective symptom testimony only based on specific, clear and  
10 convincing reasons. See Vertigan v. Halter, 260 F.3d 1044, 1049 (9<sup>th</sup>  
11 Cir. 2001). Similarly, as Plaintiff argues in her portion of the JS,  
12 once objective medical evidence is introduced which establishes an  
13 impairment that could reasonably be expected to cause some pain, this  
14 testimony and evidence cannot be discredited solely because it is not  
15 fully corroborated by objective medical evidence. Cotton v. Bowen,  
16 799 F.2d 1403, 1407 (9<sup>th</sup> Cir. 1986). Further, as the ALJ himself  
17 noted, Social Security Ruling ("SSR") 96-7p requires an assessment of  
18 a gamut of evidence in order to make a credibility determination. (See  
19 AR 17-18, JS at 7.)

20 The Commissioner's response is to default to the proposition that  
21 credibility determinations are the province of the ALJ. The  
22 Commissioner then cites evidence in the record which he believes  
23 substantiates the ALJ's credibility determination. (JS at 10-11.)  
24 This position is somewhat surprising, in that it is settled law that  
25 reliance on post-hoc reasoning which cites evidence not contained in  
26 the ALJ's decision, as the basis to substantiate that decision, is a  
27 mandatory ground for reversal. See Connett v. Barnhart, 340 F.3d 871,  
28 874 (9<sup>th</sup> Cir. 2003) ("It was error for the District Court to affirm the

1 ALJ's credibility decision based on evidence that the ALJ did not  
2 discuss. Because the ALJ did not assert specific facts or reasons to  
3 reject [plaintiff's] testimony and to find that her migraines and  
4 colitis were controlled by medication, we must reverse the District  
5 Court on this issue. (Citation omitted)").

6 The ALJ's error with regard to the credibility assessment  
7 mandates reversal for a de novo hearing on this, and as to all issues.

8 Because the Court is ordering a de novo hearing, it is not  
9 necessary to engage in a protracted discussion of the remaining two  
10 issues. To provide guidance to the ALJ, however, the Court will make  
11 certain observations. With regard to the second issue, which asserts  
12 that the ALJ ignored evidence of Plaintiff's meralgia paresthetica (JS  
13 at 11-14), the Commissioner asserts that the ALJ need not discuss all  
14 evidence in the record, but only probative evidence, and then must  
15 explain why such evidence has been rejected. (See JS at 12, citing  
16 Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9<sup>th</sup> Cir. 1984).) Here,  
17 however, it does not appear that Dr. Prentice's report does not  
18 constitute relevant evidence worthy of consideration and evaluation.  
19 Plaintiff objects to the Commissioner's assessment that other medical  
20 evidence rendered Dr. Prentice's report irrelevant, because later  
21 tests concern Plaintiff's upper extremities, not her lower  
22 extremities. The Court need not make an ultimate determination on  
23 whether the failure to discuss Dr. Prentice's report was error, but  
24 this issue should be carefully examined on remand. If there is  
25 possible relevance to Dr. Prentice's report, it should certainly be  
26 considered rather than ignored.

27 Finally, Plaintiff's third issue concerns the insufficient weight  
28 given by the ALJ as to the issue of Plaintiff's obesity and its effect

1 on Plaintiff's ability to work. (JS at 14-18.) The Commissioner  
2 correctly points out that the ALJ did, indeed, assess Plaintiff's  
3 obesity with regard to her RFC, finding more limitations due, in part,  
4 to her obesity. (See AR at 18.) Moreover, the Commissioner correctly  
5 notes the controlling Ninth Circuit case of Burch v. Barnhart, 400  
6 F.3d 676 (9<sup>th</sup> Cir. 2005), which obliges Plaintiff to demonstrate some  
7 relationship between her obesity and any relevant functional  
8 limitations. Here, other than demonstrating that the medical evidence  
9 establishes her obesity, Plaintiff has not established any such  
10 connection, based on the evidence in the record, in this case.

11 Based on the foregoing, this matter will be remanded for a de  
12 novo hearing.

13 **IT IS SO ORDERED.**

14  
15 DATED: July 14, 2010

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16 /s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE